UNITED STATES PATENT AND TRADEMARK OFFICE

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/542,208	04/18/2006	Massimo Buscema	084637-011200	1738

32361   7590   10/30/2008
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EXAMINER
COUGHLAN, PETER D

ART UNIT	PAPER NUMBER
2129	

NOTIFICATION DATE	DELIVERY MODE
10/30/2008	ELECTRONIC

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

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	Application No.	Applicant(s)
Advisory Action **Before the Filing of an Appeal Brief**	10/542,208	BUSCEMA, MASSIMO
	Examiner	Art Unit	
	PETER COUGHLAN	2129	

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED <u>09 October 2008</u> FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

   a) ☒ The period for reply expires <u>3</u> months from the mailing date of the final rejection.

   b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

<u>NOTICE OF APPEAL</u>

2. ☒ The Notice of Appeal was filed on <u>14 October 2008</u>. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

<u>AMENDMENTS</u>

3. ☒ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will <u>not</u> be entered because

   (a)☐ They raise new issues that would require further consideration and/or search (see NOTE below);

   (b)☐ They raise the issue of new matter (see NOTE below);

   (c)☒ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or

   (d)☐ They present additional claims without canceling a corresponding number of finally rejected claims.

   NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).

5. ☐ Applicant's reply has overcome the following rejection(s): _____.

6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).

7. ☒ For purposes of appeal, the proposed amendment(s): a) ☒ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

   The status of the claim(s) is (or will be) as follows:

   Claim(s) allowed: _____.

   Claim(s) objected to: _____.

   Claim(s) rejected: <u>1 and 3-35</u>.

   Claim(s) withdrawn from consideration: _____.

<u>AFFIDAVIT OR OTHER EVIDENCE</u>

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will <u>not</u> be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).

9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will <u>not</u> be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).

10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

<u>REQUEST FOR RECONSIDERATION/OTHER</u>

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because: <u>See Continuation Sheet.</u>

12. ☐ Note the attached Information *Disclosure Statement*(s). (PTO/SB/08) Paper No(s). _____.

13. ☐ Other: _____.

/David R Vincent/
Supervisory Patent Examiner, Art Unit 2129

U.S. Patent and Trademark Office

PTOL-303 (Rev. 08-06)   **Advisory Action Before the Filing of an Appeal Brief**   Part of Paper No. 10242008

Continuation of 11. does NOT place the application in condition for allowance because: On the header of the Applicant's arguments, there seems to be a typographical error. What is typed is SIN 10/542209, and I think what is meant is 10/542208.

With the final Office Action prosecution is closed. Arguments have been considered but are not persuasive.

With prosecution closed, the Examiner will not consider the references 'Pseudo-random number genrator' and 'Practical random number generation in software.' In addition, the office did not receive copies of these documents. (page 18 of 21)

Regarding claim 1, (page 19 or 21:20-23) applicant states in regards to Buscema does not teach 'a network that may actually not result to be the most desirable network.' Because Buscema does not provide protection against skewed distribution of the records. Claim 1 has no mention of 'protection of potentially skewed distribution of the records. Additionally, there is no mention within the claim that there is a need for the network to be 'most desirable.'

Regarding claim 1 (page 20 or 21: 9-15) the applicant states that the fitness score of Feldgajer is not equivalent to the 'fitness score of the claim. The Examiner disagrees. Backpropagation is based on the difference between predicted outcome and actual outcome. This is parallel to records of training and testing databases. The word 'partially' is not mentioned within the claim. The phrase 'partially different' is a relative term and adds no distinction to the argument.

Regarding claim 1 (page 20 of 21:16-23) Again the word 'partially' is not mentioned within the claim. The phrase 'partially different' is a relative term and adds no distinction to the argument.

Regarding claim 1 (page 20 of 21:24-32) The Examiner unsure which portion of the claim is being questioned. The applicant states that the individuals of the new generation in applicant invention are different from one another because such individuals are generated from different fathers and mothers and thus trained and tested with different training and testing databases. This is based on different distributions where 'a distribution formed by a deterministic mathematical process characterized as a pseudorandom distribution.' As before, pseudorandom is a relative term. thus the applicant argument is groundless.. .